IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/11/2003

CORAM

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HON'BLE MR.JUSTICE S.R.SINGHARAVELU

W.P.No.15667 of 2001
and W.P.Nos. 15707, 15790 and 16034 of 2001

The State of Tamilnadu,
rep. By the Deputy Commissioner (CT),
Vellore Division, Vellore. ..Petitioner in
all the writ petitions

-Vs-

1.Tvl.R.K.Herbal (P) Ltd.,
Reddichavadi,
Nellikuppam.

2.The Registrar,
The Tamil Nadu Taxation
Special Tribunal,
Chennai-1.

3.The Secretary,
Sales Tax Appellate Tribunal,
Chennai-104. ..Respondents in
all the writ petitions

Petitions filed under Art.226 of the Constitution of India praying for
the issue of writ of certiorari as stated therein

For petitioner : Mr.T.Ayyasamy,
Addl. G.P. (Taxes)

For 1st respondent: Mr.P.K.Krishnaswamy

:ORDER

(The order of the Court was made
by R.JAYASIMHA BABU, J.)

The Tribunal has held that under Section 38 of the Tamil Nadu General Sales Tax Act, the revision to the Tribunal should be filed by the Deputy Commissioner, referred to therein, within the period computed by taking the date of service of the order of the Appellate Tribunal on the State's representative as the star ting point.

2. It has rejected the argument that was presented for the Revenue that the computation of time should begin from the date of service on the Deputy Commissioner. Section 38 refers to "...any person who objects to such order or the Deputy Commissioner...". The Deputy Commissioners are many. The section does not specify which Deputy Commissioner. It requires that the revision should be preferred by a person who holds a responsible position in the higher rank of Deputy Commissioner and that the filing of the revision to the Taxation Special Tribunal is not to be left merely to the Assessing Officer, who is on a lower rank. The mention of the Deputy Commissioner in that section, therefore, is not intended to mandate that the computation of time for the purpose of determining the time within which the revision is to be filed should begin with the date of service of the order of the appellate tribunal on the Deputy Commissioner. The reference to the Deputy Commissioner cannot be regarded as reference to all Deputy Commissioners or to any Deputy Commissioner, chosen at random. Admittedly, there are more than a dozen Deputy Commissioners.

3. The regulations made by the Appellate Tribunal require that the party to be named in the appeal filed by an assessee is the State of Tamil Nadu. It is not required to be represented by any particular Deputy Commissioner. The person on whom noticed could be served in such an appeal is the State representative appointed by the State Government to conduct matters before the appellate tribunal. The regulations also provide that the person competent to receive notices on behalf of the Government in matters before it is the State representative. The copies of the orders made by it are also to be communicated to that State representative.

4. The State which is the party to the appeal receives notices intended for it through the State representatives and the copies of the orders served by the Tribunal on such State representative is in effect service on the State of Tamil Nadu. For purposes of filing revisions under Section 38, the State is to be represented by the Deputy Commissioner. However, the regulations framed by the appellate tribunal which also provides for service of copy of the order on the Deputy Commissioner does not imply that the Deputy Commissioner is at liberty to take the date of service of the copy on him as the starting point for computation of limitation for the purpose of filing the revision under Section 38.

5. Time will begin to run from the date on which the copy is served on the State representative. It is for the State representative to co-ordinate with the concerned Deputy Commissioner and ensure that the revision is filed within the time allowed under Section 38.

6. This position in law was set out by the Tribunal in the impugned decision rendered by it on 3rd January, 2001, reported in 124 STC 69 5. That

judgment had also been accepted by the Commissioner, who had issued a circular directing all Deputy Commissioners to co-ordinate with the State representative and ensure that the revisions are filed within the time allowed by law, by computing the time for filing the revision as commencing from the date on which the copy of the order of the Tribunal is served on the State representative, before the appellate tribunal. The State also issued circulars in which it was stated that it has accepted that order and cautioned the Deputy Commissioners to co-ordinate with the State representatives in order to ensure that the revisions are filed within the time allowed by law. Having examined the matter, we do not find any error in the order of the Tribunal warranting our interference.

7. We must also refer to an argument made by the learned counsel for the Revenue. Section 36 (8) requires that every order passed by the Tribunal shall be communicated in the manner prescribed to the appellant, the respondent, the authority from whose order the appeal was preferred, the Deputy Commissioner, if he is not such authority, and the Commissioner of Commercial Taxes. It was sought to be contended that the Deputy Commissioner being one of the authorities to whom the order is required be sent and he being an officer empowered to file the revision under Section 38, is entitled to compute the period of limitation from the date on which he receives the copy of the order. This argument is not one which can be accepted. Sub-section (8) of Section 36 requires that the copy of the order to be sent to the respondent. The respondent in the appeal is the State of Tamil Nadu which receives the notices and orders concerning an appeal through it's State representative. The service effected on the said representative is the service on the respondent. It is that same respondent State which prefers a revision under Section 38 by acting through the Deputy Commissioner. The Deputy Commissioner, therefore, is merely an agent of the State and does not

have any special status except that he is the officer who has been identified in the Act as the person who is competent to act on behalf of the State for the purpose of filing the revision.

8. The writ petitions are, therefore, dismissed.

Index: Yes
Website: Yes

To

1.The Registrar,
The Tamil Nadu Taxation
Special Tribunal,
Chennai-1.

2.The Secretary,
Sales Tax Appellate Tribunal,

Chennai-104

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